

MF 07-1

Tax Type: Motor Fuel Use Tax

Issue: Failure To Have Motor Fuel Use Tax Decal/Permit

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

**ABC d/b/a ABC HIGHWAY, INC. and
JOHN DOE and JIM DOE**

Taxpayers

Docket # 06-ST-0000

NTL # 00-000000 0

NTL # 00-000000 0

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Mr. Smith, appearing *pro se*, for ABC d/b/a ABC Highway, Inc., JOHN DOE, and JIM DOE.

Synopsis:

The Department of Revenue (“Department”) issued a Notice of Tax Liability (“NTL”) to ABC d/b/a ABC Highway, Inc./JOHN DOE (“taxpayer”), and another one to ABC d/b/a ABC Highway, Inc./JIM DOE (“taxpayer”). JOHN DOE and JIM DOE are employees of ABC d/b/a ABC Highway, Inc. The NTL’s allege that they were operating commercial motor vehicles in Illinois without valid motor fuel use tax licenses. The taxpayers timely protested the NTL’s, and an evidentiary hearing was held. During the hearing, the taxpayers’ representative maintained that the drivers were traveling together

and stopped at the Port of Entry to purchase permits, but the Port of Entry was closed. When they stopped at the next weigh station to purchase permits, they were issued citations for failing to purchase the permits when they first entered Illinois. The Department has stipulated that the taxpayers' regular practice is to purchase single trip permits when the drivers enter the State. (Tr. p. 6) After reviewing the evidence presented, it is recommended that this matter be resolved in favor of the taxpayers.

FINDINGS OF FACT:

1. The taxpayers are in the business of transporting vehicles throughout the country.
(Tr. p. 7)
2. The regular practice of the taxpayers' drivers is to purchase single trip permits when they enter the State. (Stip., Tr. p. 6)
3. On March 14, 2006, two of the drivers stopped at the Port of Entry on Interstate 64 to purchase single trip permits, and the Port of Entry was closed. (Taxpayer Ex. #1, 2)
4. On March 14, 2006, the two drivers stopped at the next weigh station to purchase single trip permits. After purchasing the permits, they were issued citations for failing to purchase them when they entered the State. (Dept. Ex. #1, 2)
5. On May 2, 2006, the Department issued two NTL's to the taxpayers for motor fuel use tax. The first NTL shows a penalty due of \$1,000 for failure to have a valid license while operating the vehicle on March 14, 2006. The second NTL shows a penalty due of \$2,000 for the second occurrence of failing to have a valid license while operating the vehicle on March 14, 2006.¹ The NTL's were

¹ The Department has stipulated that the second penalty should be reduced to \$1,000 because each penalty should be considered to be a first occurrence. (Tr. pp. 5-6)

admitted into evidence under the certificate of the Director of the Department.

(Dept. Ex. #1)

CONCLUSIONS OF LAW:

The NTL's issued by the Department allege that the taxpayers were found operating commercial motor vehicles in Illinois without a valid motor fuel use tax license pursuant to section 13a.4 of the Motor Fuel Tax Act (Act) (35 ILCS 505/1 *et seq.*), which provides in part as follows:

Except as provided in Section 13a.5 of this Act, no motor carrier shall operate in Illinois without first securing a motor fuel use tax license and decals from the Department or a motor fuel use tax license and decals issued under the International Fuel Tax Agreement by any member jurisdiction. (35 ILCS 505/13a.4).

Section 13a.5 provides an exception for motor carriers holding a single trip permit. (35 ILCS 505/13a.5). A "motor carrier" is defined as any person who operates a commercial motor vehicle in Illinois. (35 ILCS 505/1.17). Section 13a.4 of the Act also provides that the motor fuel use tax license shall be carried in the cab of each vehicle. (35 ILCS 505/13a.4; see also 625 ILCS 5/11-1419.03)). Section 13a.6 of the Act states that if a commercial motor vehicle is found operating in Illinois without registering and securing a valid motor fuel use tax license, then the person required to obtain a license or permit under Section 13a.4 or 13a.5 of the Act must pay a minimum of \$1,000 as a penalty. (35 ILCS 505/13a.6(b)). For each subsequent occurrence, the person must pay a minimum of \$2,000 as a penalty. *Id.*

Section 21 of the Act incorporates by reference section 5 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the Department's determination of the amount of tax owed is *prima facie* correct and *prima facie* evidence of the correctness of the amount of tax due. 35 ILCS 505/21; 120/5. Once the

Department has established its *prima facie* case, the burden shifts to the taxpayer to prove by sufficient documentary evidence that the assessment is incorrect. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203, 217 (1st Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill. App. 3d 1036, 1039 (2nd Dist. 1978).

The taxpayers contend that normally the drivers purchase single trip permits when they enter each State. The taxpayers argue that on March 14, 2006, the drivers stopped at the Port of Entry in Illinois, and it was closed. They stopped at the next weigh station to purchase the single trip permits. They claim that after they purchased the permits, they were given a citation for not having the permits when they first entered Illinois. The taxpayers argue that under these circumstances, the penalties should not be imposed.

The Department stipulated that it is the regular practice of the taxpayers' drivers to stop at the Port of Entry to obtain single trip permits. The Department did not object to the affidavits of the drivers that state that they were traveling together and both stopped at the Port of Entry, which was closed. Because the drivers were not able to purchase the permits there, they stopped at the next weigh station. These facts support a finding that the penalties should be dismissed.

Recommendation:

For the foregoing reasons, it is recommended that both NTL's be dismissed.

Linda Olivero
Administrative Law Judge

Enter: December 18, 2006